MOTION FILED

MAR 31 1967

Office-Supreme Court, U.S.
FILED
NOV 9 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1966~~ 70

ALITALIA-LINEE AEREE ITALIANE, S. p. A., *Petitioner,*

v.

JOHN LISI, *et al., Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Motion of the Air Transport Association of America for Leave To File a Brief as Amicus Curiae

AND

Brief of the Air Transport Association of America as Amicus Curiae

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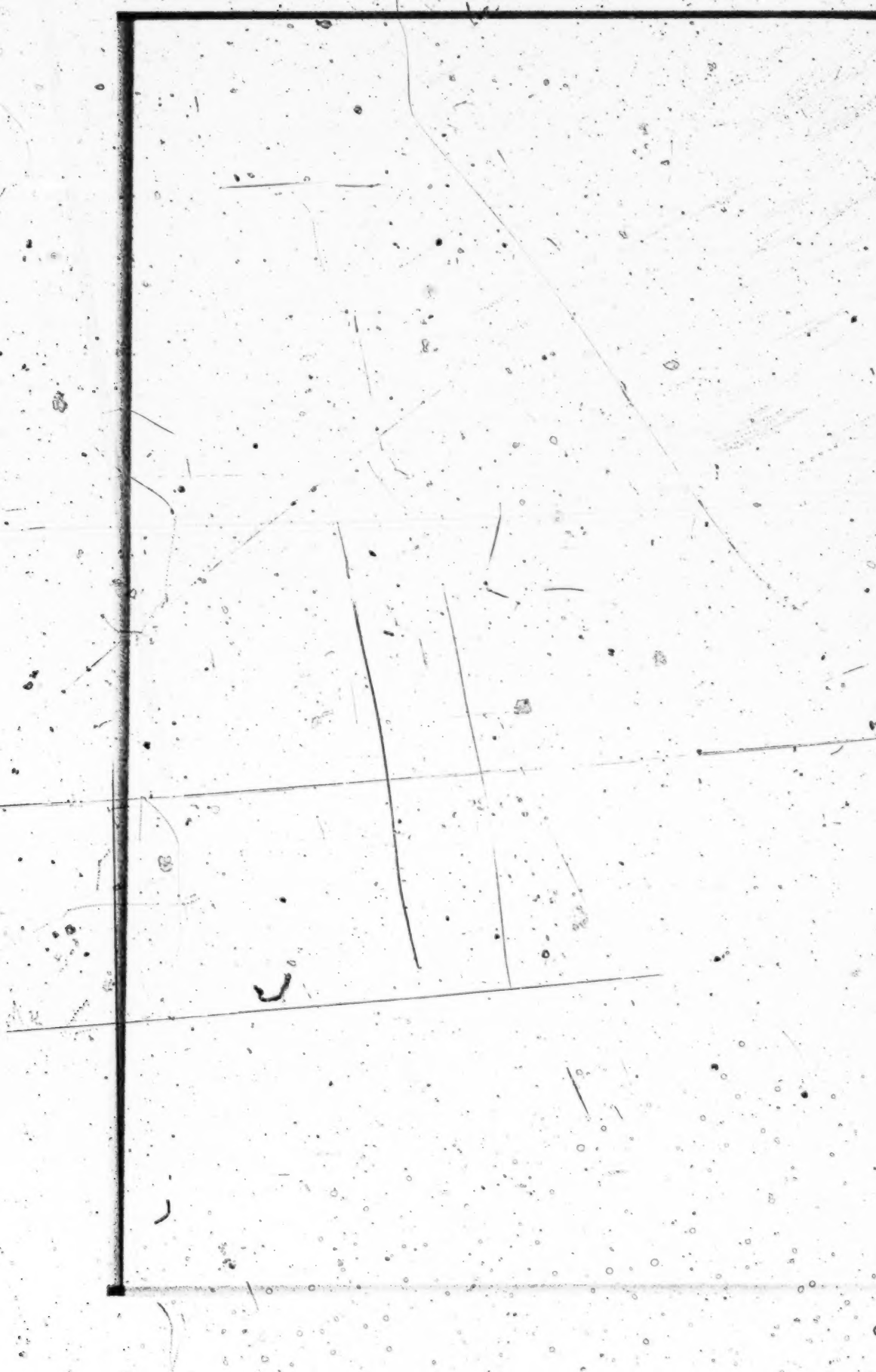

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1169

ALITALIA-LINEE AEREE ITALIANE, S. p. A., *Petitioner,*

v.

JOHN LISI, *et al., Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Motion of the Air Transport Association of America for Leave To File a Brief as Amicus Curiae

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The Air Transport Association of America ("the Association") moves this honorable Court to grant it leave to file the attached brief as *amicus curiae* in support of the petition for a writ of certiorari in the above entitled matter.

Counsel for the petitioner consent to the filing of this brief, but counsel for the respondent has refused consent. Accordingly, leave of this Court is sought under the terms of Rule 42 of the Court's Revised Rules.

The Air Transport Association of America is a voluntary association comprising virtually all of the scheduled, federally-certificated airlines of the United States. The names of the carrier members of the Association are set forth in the Appendix to the brief. As the brief shows, the decision of the court below would have a significant and direct impact on the members of the Association and on the airline industry of the United States in general. The interests of the individual parties to this case are not co-extensive in scope with the far-reaching implications of the questions at issue, and leave to file a brief as *amicus curiae* addressed to these matters should therefore be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1169

ALITALIA-LINEE AEREE ITALIANE, S. p. A., *Petitioner,*

v.

JOHN LISI, *et al., Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Brief of the Air Transport Association of America as Amicus Curiae

---

The Air Transport Association of America ("the Association") respectfully submits this brief as an *amicus curiae* in support of the petition for the issuance of a writ of certiorari to the United States Court of Appeals for the Second Circuit to review its decision and judgment in the above entitled matter, entered December 16, 1966, 370 F. 2d 508.

I

Interest of the Amicus Curiae

The Association is a voluntary trade and service organization whose membership comprises virtually all of the scheduled, federally-certificated airlines of the United States. The names of the airline members of the Association are set forth in the Appendix to this brief. These airlines carried a total of well in excess of 100-million passengers during 1966.[1]

Many of the members of the Association operate both domestic and international routes; others serve only domestic United States points. Without exception, however, all members of the Association participate in the carriage of international air traffic—over their own international routes, through interline arrangements with other carriers, or a combination of both.

As a result of collective arrangements by the world's airlines, a passenger dealing with one carrier can now move by air on a single ticket between almost any pair of points anywhere in the world. As the Chairman of the Civil Aeronautics Board recently observed:

> "Today, a carrier's ticket stock is freely accepted around the world; baggage allowances are the same in Bangkok as they are in France or Greece; the carriers have a clearing house through which settlement of interline accounts exceeded 2.8 billion dollars last year . . . .
>
> "This uniformity is of immense value to the seasoned, as well as the unseasoned, traveler. He can

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[1] Civil Aeronautics Board, *Air Carrier Traffic Statistics*, 12 months ended December 31, 1966.

now move between many lands with an ease and smoothness which is truly marvelous."[2]

The key to the airlines' achievement is thus serving the convenience of the traveling public is a comprehensive system of uniform standards, practices and procedures. At the heart of this system is the standardized airline passenger ticket under consideration in this case. The form of this ticket has been approved by the Civil Aeronautics Board, the appropriate regulatory agency of the United States Government, pursuant to its powers under Section 412 of the Federal Aviation Act of 1958, 72 Stat. 770, 49 U.S.C. § 1382. *Pan American World Airways, et al. Conditions of Carriage,* 24 C.A.B. 575 (1957).[3]

In reliance upon such governmental approval and the world-wide acceptance of this standard form of passenger ticket, the members of the Association issue such tickets for the on-line and interline carriage of passengers over their respective routes, as well as honor those issued by other carriers. To the extent that this carriage entails international transportation as defined in the Warsaw Convention, transportation is furnished on the premise that it will be governed by the long-established and well-understood terms of

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[2] Remarks of Chairman Charles S. Murphy before the World Congress, International Federation of Travel Agents, Athens, Greece, November 14, 1966, p. 7. For a comparative analysis of the difficulties encountered by reason of the necessity for ship passengers to deal separately with each steamship company, see Apter, *Shiplines Need A World Organization,* Travel Agent, April 10, 1964.

[3] The CAB specifically found with regard to the notice of applicability of the Warsaw Convention that: "The new form is much clearer and informative than the one now found on the ticket." 24 C.A.B. at 577.

the Convention. The decision of the court below, in construing the treaty with regard to this very aspect of that uniform system, directly and significantly affects every member of the Association; as, indeed, it affects all elements of the air transport industry of the United States.

II

Reasons for Granting the Writ

The decision below has construed a major, multilateral treaty of the United States in such a fashion as to abrogate one of its principal provisions. This presents an important question of federal law which has not been, but should be, decided by this Court; one that by its very nature also calls for the exercise of this Court's power of supervision over the lower federal courts.

As the preamble to the Warsaw Convention indicates,[4] the fundamental purpose of the treaty is to establish a uniform regime of law applicable to international transportation by air. Some ninety nations have become parties to the Convention since it was first signed in 1929.[5]

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[4] "[The High Contracting Parties]: Having recognized the advantage of regulating in a uniform manner the conditions of international transportation by air in respect of the documents used for such transportation and of the liability of the carrier, . . . have concluded and signed the following convention:" 49 Stat. 3014 (1934).

[5] U. S. Dept. of State, Pub. No. 8188, *Treaties in Force* 235 (1967). The United States declared its adherence on June 27, 1934, effective October 29, 1934. 49 Stat. 3000, 3013; T.S. 876. Thus the Convention is now a part of the "supreme Law of the Land", U. S. Const. art. VI cl. 2.

(a) The uniform regime of law which the Convention establishes is set forth in plain, uncomplicated terms. The dissent below accurately characterized its provisions:

> "The language of the treaty . . . is clear. Its provisions are not difficult to comprehend. Its mandates are simply stated. Ascertainment of compliance should, therefore, present no real problem." 370 F. 2d at 515.

The real problem is not one of understanding what the treaty means or intends; this is clear enough. Rather, it relates to the feeling, obviously shared by the majority below, that the Convention's limitations on liability "which have been severely and repeatedly criticized" are "arbitrary" and give a "one-sided advantage" to the carrier. 370 F. 2d at 512-513. But even if we should assume, *arguendo,* that this criticism of the Convention is justified, the question is whether a court of the United States can judicially rewrite a treaty obligation of the United States so as to cause it to be less offensive to the court's sensibilities on that issue.

The answer, we submit, must unequivocally be in the negative. As Justice Frankfurter once stated with respect to a point which differed from his personal philosophy, "But I must decided this case as a judge and not a legislative reformer." *Burford* v. *Sun Oil Co.,* 319 U.S. 315, 337 (1943) (Frankfurter, J., dissenting).

(b) Petitioner's brief adequately demonstrates the specific ways in which the decision of the majority below is in direct conflict with the express terms of the Warsaw Convention (pp. 8-10), violates the clear

intent of the signatories to this treaty (pp. 10-12), ignores the official position of the United States Government on the subject (pp. 12-13), and is in conflict with every reported authority which has considered the point (pp. 13-14). We will not burden the Court with a repetition of this compelling recitation of the error below, or the equally important matter of the effect of the decision below in compromising the good faith and integrity of the United States in its relations with other nations (pp. 14-15), but will adopt these arguments as our own. Suffice it to note that, as the former Deputy Legal Adviser of the Department of State has commented, the District Court decision which the majority below would affirm involves "breaking a chain of hundreds of precedents."[6] Such action certainly should not be permitted to become final in a case involving a treaty of the United States, without review by the highest court of the land.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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[6] Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497, 512 n. 64 (1967).

APPENDIX

Members of the Air Transport Association of America

*Air Canada
Alaska Airlines, Inc.
Alaska Coastal Airlines
Allegheny Airlines, Inc.
Aloha Airlines, Inc.
American Airlines, Inc.
Bonanza Air Lines, Inc.
Braniff International
*Canadian Pacific Airlines Ltd.
Caribbean-Atlantic Airlines, Inc.
Central Airlines, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
The Flying Tiger Line, Inc.
Frontier Airlines, Inc.
Hawaiian Airlines, Inc.
Lake Central Airlines, Inc.
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northern Consolidated Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pacific Air Lines, Inc.
Pacific Northern Airlines, Inc.
Pan American World Airways, Inc.
Piedmont Airlines
Reeve Aleutian Airways, Inc.
Southern Airways, Inc.
Trans Caribbean Airways, Inc.
Trans-Texas Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
West Coast Airlines, Inc.
Western Air Lines, Inc.
Wien Air Alaska

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* Associate Member.

Proof of Service

I, Joseph F. Healy, Jr., an attorney for the Air Transport Association of America and a member of the bar of the Supreme Court of the United States, hereby certify that on the 31st day of March, 1967, I served the foregoing Motion of the Air Transport Association of America for Leave to File a Brief as *Amicus Curiae* and Brief of the Air Transport Association of America as *Amicus Curiae* upon each of the parties, by mailing copies thereof in duly addressed envelopes with first class postage prepaid, to their respective attorneys of record, as follows:

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